TONY JOHN, MARTIN NOCK, CHRISTOPHER WALKER and EFE OSAGIE	:	**BEFORE THE SCHOOL ETHICS COMMISSION**
v.	:	
	:	**Docket No. C34-08**
KEN GORDON	:	
WILLINGBORO BOARD OF EDUCATION	:	**DECISION**
BURLINGTON COUNTY	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 21, 2008 by Tony John, Martin Nock, Christopher Walker and Efe Osagie alleging that the respondent, then a member of the Willingboro Board of Education ("Board"), violated the School Ethics Act. Specifically, the complainants allege that the respondent violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members.[1]

The respondent filed an answer on November 13, 2008. The Commission invited the parties to attend its July 28, 2009 meeting for a hearing pursuant to N.J.A.C. 6A:28-6.9. By letter dated July 24, 2009, the Commission was notified that the respondent had obtained counsel, Thomas Abbate, Esq. Mr. Abbate requested an adjournment on behalf of the respondent. The matter was rescheduled for the Commission's meeting on August 25, 2009, at which time the parties appeared and the Commission heard testimony. The Commission tabled the matter, pending further discussion at its meeting on September 22, 2009. At the public portion of the Commission's meeting on September 22, 2009, the Commission voted to find that the respondent violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members and further determined to recommend a penalty of reprimand.

SUMMARY OF THE RECORD

Complainants Tony John, Christopher Walker and Martin Nock appeared to present their case. The respondent, Ken Gordon also appeared, with counsel.

Mr. Edward Kern, the former Interim Superintendent for the Willingboro School District, testified for the complainants. Mr. Kern testified that the district had discussed having a mock election for its students on the date of the actual school board elections on April 15, 2008. The mock election would be sponsored by the district's PTOs/PTAs as well as the Willingboro

[1] On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed on October 21, 2008, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

Education Association (WEA). Mr. Kern explained that, initially, the mock election was viewed as a positive learning experience for the students, who would be accompanied by their parents to the polls. Thus, the mock election would be a civics lesson for students which could result in increased voter turnout.

However, as the event unfolded, Mr. Kern learned that incentives, like pizza parties and rewards, were being offered for students' attendance. He testified that flyers were sent by the WEA and PTOs. Mr. Kern did not want such flyers to be on district letterhead. He spoke with the "election committee" and was informed that these incentives were not appropriate and could taint the general school board election.[2] Mr. Kern explained that he was increasingly uncomfortable with holding the mock election for students.

Mr. Kern testified that there was an impromptu meeting held on Friday April 11, 2008; some board members were present and they discussed the mock election and the promotional activities. Mr. Kern testified that on April 15, 2008, he was scheduled to attend a county roundtable meeting. He called the principals in the district that morning and informed them that the mock election "was off." He stated that he specifically gave the directive to Mrs. Lucas, principal of Willingboro High School (WHS), not to have the mock election. However, he later received a call from Mrs. Lucas, who told him that the mock election was back on. Mr. Kern acknowledged that there was much confusion surrounding the cancellation of the mock election, but he maintains that it was within his discretion to hold the mock election or not, inasmuch as the event was scheduled to take place on school grounds.

Mr. Kern further acknowledged that the mock election cancellation became a "hot issue." He mentioned at a Board meeting that he was considering taking disciplinary action against Mrs. Lucas since he maintained it was not her place to counter a Superintendent's decision. According to Mr. Kern, Mrs. Lucas "took it upon herself to contact the other principals and counter his directive." Mr. Kern stated that Mrs. Lucas was never actually disciplined for the incident.

Mr. Kern verified that Exhibit C-1 was a memorandum from the Director of Human Resources stating that the matter would be turned over to Board counsel for investigation. Exhibit C-2 is the summary of the Board attorney's investigation, which incorporated documents prepared by Mr. Kern. Specifically, Exhibit C-3 is Mr. Kern's chronology of events; Exhibits C-4 and C-5 are letters sent by Mr. Kern to Mrs. Lucas on May 5, 2008 and May 6, 2008, respectively. Exhibit C-6 is an email addressed to Mr. Kern and "signed" by Mr. Gordon, which Mr. Kern stated that he received. Mr. Kern affirmed that he did not read the email from the respondent as a threat, although he stated it was "a strong statement by Gordon to back off" (*i.e.*, not take any disciplinary action against Lucas). Mr. Kern testified that the email did not affect his decision not to discipline Mrs. Lucas.

Mr. Kern confirmed that at the time of this incident, the Board was in the midst of negotiations with the [administrators'] union. Mr. Gordon was a Board member and chair of Negotiations Committee. Mrs. Lucas was the principal of the WHS and the President of the Willingboro Educational Administrators' Association (WEAA).

[2] It is presumed that the witness was referring to the County Board of Elections.

On cross-examination, Mr. Kern acknowledged that the Board had never taken formal action with respect to the mock election. Nevertheless, the activity was to take place on District property. He testified that concerns first arose when he was approached in late March or early April about flyers that were circulating; however, he did not discuss concerns with the Board at a meeting. Mr. Kern testified that about two weeks before the scheduled mock election, he "let it be known that it was heading in wrong direction." However, he did not "pull the plug" until the election date.

Mr. Kern further testified on cross-examination that he believed on the morning of April 15, 2008, he contacted the Board president, but did not call Mr. Gordon. He stated that he spoke with Mrs. Lucas on the way to his meeting, around "8:00 ish" and told her that the activity was cancelled. He returned to the district about 1:00 or 1:30 p.m. Mr. Kern stated that on his way to the roundtable meeting, he received calls indicating that there was "activity" in the Levitt Middle School, notwithstanding that he "pulled the plug on the whole thing." Mr. Kern stated that the Superintendent has the authority to approve every activity in the District. He acknowledged that if there were PTO/PTA events on the school property that were "something routinely scheduled" he may not get involved.

Theresa Anne Lucas testified for the complainants. She was the principal of the WHS at the time that the mock election was scheduled to take place. Mrs. Lucas explained that April 15, 2008 was a scheduled Career Day in her school. That morning, she was in the cafeteria; someone came to get her and told her that Mr. Gordon was in the building. She went to her office to meet him. Mrs. Lucas described Mr. Gordon as "pretty animated." According to Mrs. Lucas, Mr. Gordon was annoyed and stated that "we continuously do things in Willingboro to take opportunities away from children." He spoke about the mock election as an activity to engage the students in voting.

According to Mrs. Lucas, Mr. Gordon informed her that the Interim Superintendent had directed everyone not to hold this activity. Lucas testified that Mr. Gordon was adamant that this was a PTA activity. He further explained that she, as union president, needed to contact her members and tell them that the mock election was not a Board initiative, but rather, a PTA initiative; therefore, the activity should not stop. In this connection, Mrs. Lucas clarified that cancellation of the election did not affect WHS, since it was not a polling station. Nevertheless, Lucas testified that she informed Mr. Gordon: "I will call my colleagues and relay the message." She then began making calls; she talked to some colleagues. Some said they would wait until they received some confirmation; Mrs. Lucas reiterated that she was "just relaying the message."

Mrs. Lucas testified that she was confused and felt she was being put "between a rock and a hard place." She stated that she had a conversation with Mr. Kern around 7:45 a.m. that day and he told her that although it does not affect your school, he was going to be calling the other principals to let them know that we are not going forward with the mock election. Mr. Gordon's "future position," according to Lucas, was pretty clear: "it was almost common knowledge that [Mr. Gordon] would be the next Board president" and she did not want "to tick him off." Lucas stated that Gordon urged her, as the WEAA president, to make the calls to the

other principals. She felt she was in a "damned if you do, damned if you don't" situation that was unsettling; she did not want to see her hard work "go down the tubes."

Later that day, at about 5:00 p.m., Mr. Kern approached her during a Middle States reception and asked, "Since when do you overturn my directive?" The question caught her by surprise. To this, she responded that she did not give anyone a directive contrary to his; rather, Mr. Gordon was there in her office and he made it clear that he needed the message to "get out" from her; she complied. According to Mrs. Lucas, Mr. Kern told her there could be some serious consequences; they would have to notify "the election board." Mrs. Lucas stated that she had no idea it was that serious. Mrs. Lucas felt that a Board member put her in a compromising position.

Mrs. Lucas identified Exhibit C-7 as a letter which she wrote to Mr. Kern on April 28, 2008 because she was concerned she could be subject to disciplinary action. Mrs. Lucas also identified Exhibit C-8 as a letter that she wrote to Mr. Kern on April 30, 2008. She testified that it was written a day after she had surgery. The letter recounts that she received a phone call in the morning from Gordon who stated that he was aware of her April 28th letter to Kern. Lucas stated that the letter had been given to her secretary to deliver. According to Lucas, Gordon said he would write a letter to Mr. Kern, but Lucas needed to "pull" the letter she had already written to him. Mrs. Lucas replied that she was home recovering from surgery. Gordon requested her email address. Thereafter, she received a draft email from Gordon addressed to Mr. Kern explaining what had happened (Exhibit C-6) Mrs. Lucas said she forwarded the email to the Board's attorney and to her attorney.

On cross-examination, Mrs. Lucas testified that although Mr. Gordon was Chair of the Negotiations Committee and she was the president of the WEAA, she was not participating regularly in negotiations because she was out on disability in December 2007 and returned for work on March 30, 2008. She worked through April 27, 2008, and then had a second surgery on April 28, 2008. Mrs. Lucas stated that Keith Ellerbe, the vice president of WEAA, was involved in the negotiations that year.

Mrs. Lucas denied that she made frequent calls to Mr. Gordon seeking advice. Instead, she said she returned his calls "and maybe on a couple occasions" called him to ask questions about a scheduled meeting. Most of these calls, Mrs. Lucas stated, were before December 2007; Mr. Ellerbe "picked up during the time she was out." Mrs. Lucas stated that while it was not "out of the ordinary" to talk with Mr. Gordon, it was out of the ordinary for Mr. Gordon to make such a request of her. She acknowledged that her letter of April 28th refers to interference from other Board members, not just Mr. Gordon.

Mrs. Lucas reiterated that when Mr. Gordon spoke with her on April 15th, he was annoyed that the mock election had been cancelled because it was not a Board initiative but a PTA initiative. Mrs. Lucas stated that to her knowledge it was not a Board initiative, "but when the schools are giving out flyers and the administrators need to make it work to move forward, it is questionable." She was confused about how to proceed. She restated that Mr. Gordon "was quite animated;" his voice was elevated at times. He appeared annoyed that there was a change, although he did not yell. He was in her office about 10-15 minutes. Mrs. Lucas conceded that

Mr. Gordon had a reason to be in the building that day as he was speaking at Career Day, but he did not have to be in her office. Career Day activities were taking place in the library, which is the opposite end of the building from her office. Moreover, Mrs. Lucas explained that the ROTC students were greeting visitors and directing them to the library, so it was unusual for the respondent to come to her office that day, especially since she was not there, but at the career fair in the library.

Mrs. Lucas acknowledged on cross-examination that she is no longer the principal of the high school. She stated that, subsequent to the events herein, she was asked by Interim Superintendent Dawson to take a central office position, which she declined. Nevertheless, Mrs. Lucas learned that her principal's position was posted on October 8, 2008. After that, however, she was told she was not being transferred; the District restructured mid July [2009]. Mrs. Lucas acknowledged that she sent a letter to her attorney on October 11, 2008 with a detailed chronology. She stated that she retained an attorney "for other reasons" and she did file a suit recently having nothing to do with this matter. She stated that under the new Superintendent, a number of administrators were called and asked to cooperate with a restructuring, and she consented to a transfer.

Former Board member Sarah Holley testified for the complainants. She was a Board member on April 15, 2008 running for reelection. Ms. Holley testified that she had hip replacement surgery on March 16, 2008; while recuperating at home, she received calls from employees and people in the community that efforts were underway to unseat her. She was told that students were promised that if parents came out, students would get pizza. According to Ms. Holley, this was put in place by sitting Board members Gordon, Bouyer and Bolden, as well as the PTA. Ms. Holley testified that she was not informed that there would be a mock election; she heard from the community that it was put in place so the Board could "turn over" and be replaced. Ms. Holley testified that this would give Gordon control of the Board. She stated that the mock election was not a Board function. After the election, she made a request under the Open Public Records Act and learned of the investigation relative to this matter, which took place after she was off the Board.

Complainant Anthony John testified that on May 21, 2008, the Board received a letter from Senator Diane Allen regarding a potential settlement with Alonzo Kittrels, the former Superintendent of the District against whom tenure charges had been filed and were pending. (Exhibit C-9). That letter was copied to all Board members. Mr. Gordon, at that time, was President of the Board. Gordon responded to Senator Allen on the same date and said that he would contact her office to set up a meeting. Mr. John emailed Mr. Gordon stating that the Senator could not be told anything that happened in executive session. Mr. Gordon agreed. (Exhibit C-10) Mr. Gordon met with Senator Allen. By letter dated May 28, 2008, Senator Allen sent follow-up correspondence to Mr. Gordon requesting additional information. (Exhibit C-11)[3] Mr. John testified that Mr. Gordon should not have told the Senator anything about the pending settlement.

[3] It was noted that the letter marked as Exhibit C-11 was not copied to the Board and was addressed solely to Mr. Gordon. Mr. Gordon's counsel did not object to the letter coming into evidence.

Thereafter, on July 3, 2008, an article appeared in the Burlington County Times which recounted an interview with Mr. Gordon. As to the statements made by Gordon in the article, Mr. John stated that he was pretty sure the Board did not discuss the cost of the Kittrels litigation, but even if they did, that information should not have been given to the reporter. Mr. Johns recalled that a member of the public had asked for an update on the Kittrels settlement and the Board attorney said that the Board would not be giving any statements about that. Mr. John stated that at this point in time, no details had been given to the public about the determination to settle the Kittrels matter versus actually going to trial. Yet, Gordon is quoted in the article as providing reasons why the Board should settle and states that the Board was leaning toward settlement because of cost and prior mistakes made. Mr. John stated that the decision to settle was made "soon afterward."

Complainant Christopher Walker testified that he also received a call from the reporter about this article. According to Mr. Walker, the reporter said she understood that we would not be giving a comment, but she had already spoken to Mr. Gordon who provided a comment. He stated that the total cost of the litigation had not been discussed, although "rumors were rampant about proposed settlement."

Complainant Nock testified that the Board, during this time, was still involved in collective bargaining negotiations. He testified that a $10 million loan had been given to the town and that Senator Allen was supportive of Willingboro receiving this money.

Respondent Ken Gordon testified that he was a Board member in Willingboro from 2006 to 2009. He stated that he initially ran for the Board upon the urging of community members who were concerned about the district; he shared their desire to make changes. He served as President in his final term, 2008-2009.

Mr. Gordon testified that it was his understanding that the purpose of the mock election was to encourage the community to get involved in the election. He stated that one of the Board members had attended a seminar and learned about a "Kids Vote" program; the Board member brought the idea back to Willingboro. The purpose of the mock election was to increase voter turnout. Mr. Gordon stated that it was important because, in the past, decisions were not being made by people who had children in the district. The district had a history of low voter turnout. According to Mr. Gordon, the mock election was not intended to favor any candidate or viewpoint. The teachers' union and the PTAs were proponents of the event.

Mr. Gordon stated that the mock election was not the subject of Board action. The Board member who brought the idea to Willingboro was the chairperson of the PTO/PTA committee. There were general discussions, but no formal action taken. According to Mr. Gordon, the mock election was run by the WEA and PTA. The Board did not typically approve or get involved with WEA or PTA events. Mr. Gordon stated that the mock election idea was initially proposed around January or February. He first became aware of concerns with the event when Sarah Holley submitted a letter to the Interim Superintendent that was copied to the Board. Gordon testified that Holley felt this event was a conspiracy to get her off the Board. Gordon affirmed that this was not the purpose based on what he knew; he had no knowledge that the mock election was designed to favor one candidate over the other.

Mr. Gordon testified that he did not learn of other concerns with the mock election until the night before the election. He heard from his wife, who was a PTA president at the time, that there were concerns about the incentives being offered to students. Gordon stated that, as a result of these concerns, according to his wife, the PTA was informed that no incentives were to be offered and all agreed to this requirement. Thus, it was Gordon's understanding that it was not an issue and they were moving forward with the mock election.

Mr. Gordon testified that on the morning of April 15, he received a call from a PTA president informing him that the mock election had been cancelled. The caller stated that it was her understanding that the mock election had been cancelled by the Board, and she wanted to know why. Gordon initially thought that the caller had been given the wrong information; however, subsequent calls from the PTA seemed to reflect the same story: that the Board cancelled the mock election. Gordon testified that the PTA was beginning to talk about action that could be taken. He then called Board member called Bolden, who was Chair of the PTO/PTA committee and asked if she knew it was cancelled; she did not. He called Board member Bouyer and asked the same question; she did not know anything. Mr. Gordon stated that he then called the Interim Superintendent to find out what was going on. Mr. Gordon said he called Mr. Kern's cell phone number three times. He did not get a return call until later that evening.

Mr. Gordon was invited to speak at the WHS's Career Day on April 15th. First, he stopped to see Mr. Kern in person and his secretary told him Mr. Kern was out for the day; Mr. Gordon asked the secretary to help him get in touch with Mr. Kern. The secretary tried to call Mr. Kern, but could not reach him. Mr. Gordon then stopped to see the Business Administrator, who was not aware of the cancellation of the mock election. Mr. Gordon did not ask the Business Administrator to overrule the Interim Superintendent or take any action. Mr. Gordon stated that he had never known the Superintendent to get involved with cancellation of PTA/PTO events.

Mr. Gordon testified that he then left the central building and was approached by two principals. They told him that they had been called by a number of parents and they were confused by the cancellation. Mr. Gordon stated that he told the principals that the Board did not cancel the event. When he went to the High School for Career Day, Mr. Gordon affirmed that he signed in and went to the main office to let Mrs. Lucas know he was in the building. He said that he asked to see Mrs. Lucas just to inform her he was in the building.

According to Mr. Gordon, he asked Mrs. Lucas if she was aware of the confusion surrounding the cancellation of the mock election. She said that she was. Mr. Gordon said he was concerned because the district was in the midst of negotiations, that things were going well and he did not want this to affect labor discussions. He informed her that the Board did not cancel the mock election. Gordon explained that because "her principals" stopped him in parking lot, he asked her to please call her members to let them know the cancellation did not come from the Board. He was there for about 5-10 minutes. Mr. Gordon testified that he did not insist that she call the principals; he did not issue a direct order; he asked her for reasons of clarity and negotiation goals. He did not ask her to tell her membership to proceed with the mock

election. He had been told that the Interim Superintendent attributed the cancellation to the Board and Mr. Gordon wanted to be clear that this was not the case. Mr. Gordon did not intend for Mrs. Lucas to take any action to contradict the Interim Superintendent's directive. He did not raise his voice; he stated it would be out of character for him to yell. Mr. Gordon stated that he and Mrs. Lucas were merely standing in her office talking. After this exchange, Mr. Gordon left Mrs. Lucas' office and was escorted to Career Day. Before exiting the building that day, Mr. Gordon returned to tell Mrs. Lucas that he was leaving and he asked her if she had spoken with her members; she said that she had.

Mr. Gordon testified that he felt that it was important that Mrs. Lucas know that the Board was trying to support the union. As the Chair of the Negotiations Committee, Mr. Gordon affirmed that he had frequent interactions with Mrs. Lucas as President of bargaining unit. He explained that although the actual negotiations occurred in a group setting, he nevertheless had a number of occasions to interact with Mrs. Lucas. Mr. Gordon further testified that since he was on the Board, Mrs. Lucas regularly sought him out. He estimated that in the months from September 2007 through December 2007, she called him about 35-40 times on matters not necessarily limited to collective bargaining issues. According to Mr. Gordon, he tried to coach Mrs. Lucas "into using the process," but she felt she was victimized.

Mr. Gordon affirmed that he believed that the way the announcement of cancellation was made, the Board would have to deal with the brunt of the discontent. In speaking to the PTA presidents, they believed it was illegal for the Interim Superintendent to bar a PTA event. According to Mr. Gordon, the Board's policy provides that the Business Administrator determines who can use the District's facilities. Mr. Gordon testified that he believed that the public needs to be accommodated and, with the Interim Superintendent out of the District that day, there was potential for legal conflict. According to Mr. Gordon, "we were in the line of fire based on our policies and the PTA was upset."

Mr. Gordon testified that after April 15, 2008, his relationship with Lucas changed. About a week later, he received a call from Mrs. Lucas who stated that Board members were telling her that he "had thrown her under the bus." Mr. Gordon staid he spoke with Mr. Kern on the evening of April 15, 2008 and "his demeanor very different from today [when he testified]." Mr. Gordon said that Mr. Kern apologized for what happened. Gordon said that Kern "appeared to have an axe to grind with Mrs. Lucas." According to Mr. Gordon, there were ongoing efforts to discipline Mrs. Lucas and Mr. Kern wanted her to be removed as a principal. Mr. Gordon stated that Mrs. Lucas's attorney had served the Board with intent to sue on harassment claims.

With respect to the Kittrels litigation, Mr. Gordon stated that there had been a budgetary shortfall. The initial tenure charges that were brought against Kittrels by the Board were "thrown out" because the Board had done improper things. Gordon stated that he was on the Board when the initial tenure charges were dismissed. The Board had to recertify the charges. According to Gordon, the Board questioned the potential of a settlement. Gordon stated that, "we did not think they would go for it but we floated it out there." This discussion, according to Gordon, took place about four months before the meeting with Senator Allen.

Mr. Gordon stated that prior to the meeting with Senator Allen, there was a verbal agreement to pursue a settlement. According to Gordon, the Board was told it was a binding agreement as long as it was approved by the Commissioner of Education. The State Monitor reported the proposed settlement to the Commissioner and they were awaiting the approval. When the Commissioner had more questions that needed to be answered, they "were in limbo" while waiting for approval. According to Gordon, the next step was to sign and execute the documents and it was a "done deal." The Board would approve the settlement, then the Commissioner would review it.

Mr. Gordon testified that people came to a Board meeting and asked about the letter from Senator Allen. According to Gordon, they were angry and upset about it. Gordon testified that in public session, he made the public aware that he would meet with Senator Allen. Before that public session, Gordon stated that he had not talked to anyone about it. Gordon said that the Board did not confirm or deny what Senator Allen stated but merely stated that the information "was out there."

Mr. Gordon testified that upon receiving the letter from Senator Allen, the Board talked about whether he should meet with her and what he should say. Mr. John was present at that meeting. Mr. Gordon stated that the majority of the Board believed that "we needed to meet with her and give her general information, not specifics." He said that the Board authorized his meeting with Senator Allen, although there was no formal vote. As the President of the Board, he would handle external communications. Additionally, Mr. Gordon testified that he conferred with the Board attorney about what he could say. He was told that he could meet with the Senator as long as he provided no specifics. He was also advised to discuss the matter with the State Monitor. The meeting was with Mr. Gordon, Senator Allen and her aide. Mr. Gordon said that he discussed the initial tenure charges that were brought by the Board and dismissed. Gordon testified that he did not provide any details about pending matters and specifics about what the Board would do. According to Mr. Gordon, Senator Allen was key in getting the $10 million loan for the district and it was his understanding that that Sarah Holley informed the Senator about a potential settlement.

After the meeting, Mr. Gordon received a confirming letter from Senator Allen (Exhibit C-11). Mr. Gordon testified he believed that the "mistakes" to which the Senator referred in her letter were those mistakes made in bringing the initial tenure charges against Kittrels, and she was not asking for information about pending legal matters. Mr. Gordon stated that it was not up to him to provide her with such information since she could have obtained it for herself.

Mr. Gordon testified that when the reporter for the Burlington County Times called him about a potential settlement, he asked if he could call her back. He then called the Board attorney and made him aware of the reporter's phone call. Mr. Gordon returned the reporter's call; she wanted a statement. Mr. Gordon does not dispute that he stated what was printed in the article on July 3, 2008. He stated that she quoted him accurately. He merely stated that the Board was bound to explore all possibilities and that legal bills associated with litigating the matter could result in a cost of $1 million. Mr. Gordon explained how he arrived at that figure. A member of the public once asked the Board in a public session how much it spent for litigation

on an annual basis; according to Mr. Gordon, the annual legal budget was $300,000. Thus, Gordon reasoned that if the case went on for three years, the costs could be $1 million.

On cross-examination, Mr. Gordon acknowledged that his sister was running for the Board in 2008 and was endorsed by the WEA. He had no way of knowing whether increased voter turnout would benefit her. He stated that he was not aware that the Board's policy with respect to usage of its facilities provided for final approval by the Superintendent. The mock election issues for the students were about Field Day and dress down days.

With respect to the email that Gordon sent to Kern (Exhibit C-6), Mr. Gordon stated that although the email indicates that he called Mr. Kern in his office on April 15th, he called him both on his cell phone and at his office. Gordon addressed the language that he used in the email to Kern. Specifically, the email states that he told Mrs. Lucas that "she was to instruct the principals…." To this, Gordon stated that the Board was not involved with the mock election and he did not give Mrs. Lucas a directive to countermand what the Superintendent said or did. Mr. Gordon felt it was necessary to clarify this with the principals because he did not want the principals "to feel that they were left out to dry." It was not his intent to speak on behalf of the entire Board. According to Mr. Gordon, Mrs. Lucas made no objection and she expressed no reservations to him. Gordon stated, "I believe as a board member I have a right to straighten out misinformation that could have been injurious to the board." Gordon insisted that he did not tell Mrs. Lucas to countermand the Interim Superintendent.

With respect to the letter from Senator Allen, Mr. Gordon stated that the majority of the Board agreed to the settlement and had given the "OK" to the attorneys; Senator Allen "heard" about it, but the board had never told the public.

Complainants' Exhibits

C-1	Memorandum from the Director of Human Resources to Kern; Complaint attachment A-1
C-2	Investigation Summary; Complaint attachment A-2
C-3	Kern's summary of events; Complaint attachment A-4
C-4	Kern letter to Lucas, May 5, 2008; Complaint attachment A-5
C-5	Kern letter to Lucas, May 6, 2008; Complaint attachment A-6
C-6	Email from Gordon to Kern; Complaint attachment 3
C-7	Lucas letter to Kern, April 28, 2008
C-8	Lucas letter to Kern, April 30, 2008
C-9	Senator Allen's Letter to Gordon, May 21, 2008
C-10	Emails regarding Senator Allen's request
C-11	Senator Allen's letter to Gordon, May 28, 2008
C-12	July 3, 2008 article in Burlington County Times

FINDINGS OF FACT

Both parties in their testimony referred to tenure charges that were brought against the former Superintendent, Alonzo Kittrels. However, neither party brought any related document to the record. Accordingly, the Commission informed the parties at the hearing on August 25, 2008 that, pursuant to N.J.A.C. 1:1-15.2, it would take official notice of the decisions issued relative to this litigation. Neither party objected. Thus, the Commission takes official notice of the following facts:

1. On November 28, 2005, the Willingboro Board of Education filed tenure charges against Alonzo Kittrels, then Superintendent of Schools. The Board voted to certify the charges to the Commissioner of Education on December 5, 2005. Thereafter, Mr. Kittrels filed suit in Superior Court alleging that the Board violated the Open Public Meetings Act at the November 25 and December 22, 2005 meetings. On May 11, 2007, Judge Sweeney entered an Order granting summary judgment to Kittrels. The Board of Education agreed to a voluntary dismissal of the tenure charges based on Judge Sweeney's Order. The agreement to dismiss the charges was approved by the Administrative Law Judge on November 14, 2007 and by the Commissioner of Education on December 24, 2007. In the Matter of the Tenure Hearing of Alonzo Kittrels, School District of the Township of Willingboro, Burlington County, OAL Dkt. No. EDU 00099-06, Agency Dkt. No. 387-12/05. ("Kittrels I")

2. The Board brought tenure charges against Kittrels a second time. On or about March 31, 2008, these charges were certified to the Commissioner of Education and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case. An initial decision in the form of a settlement was issued by the ALJ on July 10, 2008 and referred to the Commissioner for final determination. A certification from Board Counsel therein states that on June 23, 2008 during Executive Session, the Board discussed the settlement agreement and approved the terms, contingent upon approval by the Commissioner of Education." By decision dated August 26, 2008, the Commissioner remanded the matter to the OAL for further proceedings finding that the proposed settlement did not meet the legal standard necessary for the settlement of tenure matters. In the Matter of the Tenure Hearing of Alonzo Kittrels, School District of the Township of Willingboro, Burlington County, OAL Dkt. No. EDU 2820-08, Agency Dkt. No. 102-4/08 ("Kittrels II")

3. The Commissioner approved the settlement in Kittrels II on May 27, 2009. In the Matter of the Tenure Hearing of Alonzo Kittrels, School District of the Township of Willingboro, Burlington County, OAL Dkt. No. EDU 8566-08, Agency Dkt. No. 102-4/08

The Commission was able to discern the following facts based on the testimony, pleadings and all documents submitted.

4. At all times relevant to this complaint, the complainants and the respondent were members of the Board.

5. The respondent was a Board member from 2006 through 2009. He was the President of the Board for the 2008-2009 term.

6. In the Spring of 2008, the District had been considering holding a mock election for students to be held on April 15, 2008. The purpose of the election was to increase voter turnout. The students would vote on student-related issues.

7. The mock election was sponsored by the PTO/PTA along with the WEA. Although Board members were aware of the mock election, the Board never took action to formally authorize the activity.

8. As election day approached, Interim Superintendent Kern became increasingly concerned about holding the mock election when he became aware that incentives were being offered to the students.

9. A meeting was held on April 11, 2008 to discuss the concerns with the mock election.

10. On the morning of April 15, 2008, Interim Superintendent Kern made the decision to cancel the mock election.

11. Mr. Kern attended a county superintendents' roundtable meeting on April 15, 2008.

12. Phone calls were made to all principals that morning to advise them that the mock election was cancelled.

13. Mrs. Teresa Ann Lucas, then principal of the Willingboro High School, received a call from Mr. Kern regarding cancellation of the mock election at approximately 8:00 a.m. on April 15, 2008.

14. Respondent Ken Gordon received calls at home that morning from PTO members who were questioning the cancellation. They believed that the Board of Education cancelled the event and they wanted to know why. Mr. Gordon called Board members Bolden and Bouyer to find out what they knew; they did not know anything about the cancellation that day.

15. Mr. Gordon tried to reach Mr. Kern by telephone that morning, but could not.

16. Mr. Gordon was scheduled to participate in the Career Day that was being held on April 15, 2008 at Willingboro High School.

17. Before going to the High School, Mr. Gordon stopped by the central office to see Mr. Kern, who was not in the building. Mr. Kern's secretary tried to call Mr. Kern, but could not reach him.

18. Mr. Gordon then stopped to see the Business Administrator, who was not aware of the cancellation of the mock election. Mr. Gordon did not ask the Business Administrator to overrule the Interim Superintendent or take any action.

19. Mr. Gordon left the central building and was approached by two principals who informed him that they had been called by a number of parents and they were confused by the cancellation. Mr. Gordon told the principals that the Board did not cancel the event.

20. Mr. Gordon went to the High School for Career Day; he signed in and went to the main office. He asked to see Mrs. Lucas.

21. At the time, Mrs. Lucas was the President of the WEAA and Mr. Gordon was the Chair of the Negotiations Committee. The Board was involved in negotiations with the administrators' bargaining unit.

22. Mr. Gordon was upset about the cancellation; he felt that it was important that Mrs. Lucas know that the Board was trying to support the union. Mr. Gordon informed Mrs. Lucas that the Board did not cancel the mock election.

23. Mr. Gordon asked Mrs. Lucas to call the other principals to let them know the cancellation did not come from the Board and, therefore, they were not to stand in the way of the event. He was there for about 5-10 minutes. After this exchange, Mr. Gordon left Mrs. Lucas' office and was escorted to Career Day. Before exiting the building that day, Mr. Gordon returned to tell Lucas that he was leaving and he asked her if she had spoken with her members; she said that she had.

24. The Levitt Middle School conducted a mock election. (Exhibit C-3)

25. At a Board meeting on April 21, 2008, Mr. Kern mentioned the possibility of disciplining Mrs. Lucas.

26. By letter dated April 28, 2008, Mrs. Lucas wrote to Mr. Kern regarding his statements at the public meeting. Mrs. Lucas stated therein stated, in pertinent part:

> As we discussed on Tuesday, April 15, 2008, I was given a clear directive from Ken Gordon, Board President, as WEAA President, to contact WEAA members.[4]
>
> The message clearly stated that the mock election was not a Board Function, but a PTA Activity. Therefore, we had no involvement should the activity take place. Please note that when you contacted me at 8:30 a.m. that morning you only indicated that you would be calling principals to inform them that the Board would not be holding mock elections.

[4] Mr. Gordon was not the Board president at this time. Testimony from Mrs. Lucas, as set forth above, indicates that she was aware of that fact.

> At no point did you indicate that this was a directive for PTA or WEA not to hold mock elections. More importantly, principals received no written notification, nor did they receive information that the event would be cancelled prior to Election Day." (Exhibit C-7)

27. On April 29, 2008, Mr. Gordon called Mrs. Lucas. Thereafter, on the same date, Mr. Gordon forwarded to Mrs. Lucas a draft of an email addressed to Mr. Kern. Mr. Kern received the email, although it is not clear when he received it. Addressing the events of April 15, 2008, Mr. Gordon stated, in pertinent part:

> I indicated to Mrs. Lucas that she should contact the Principals, as the President of the WEAA and inform them that the Mock Election was not a Board of Education Function. I further indicated that it was unprecedented for a PTA function to be canceled by the Superintendent. Therefore, she was to instruct them not to interfere or stand in the way of said event.
>
> As the presumptive Board President, clearly this placed Mrs. Lucas in an awkward position. However, this position was no more awkward than the position in which the other Principals were placed when they were asked to cancel a non-Board of Education function sponsored by the PTA. As I indicated to you in person, the organizers of the event were well aware of the need to ensure incentives were not provided. When a report came to you indicating that incentives were promised, it should have been dealt with on a case by case basis and not by canceling the entire event.
>
> Mr. Kern, the bottom line is that many of us responded in a manner which, if we could do it all over again, we would likely do differently. If we are to mete out discipline or counsel those involved that did not respond in a matter [sic] you or I would have liked, as the leaders of this School District, then the line would be quite long. Therefore, it is unfair to single out Mrs. Lucas and counsel her. Further, it would be inadvisable to mete out discipline in any form to the President of the Union, who was advising the unit members on direction given from the presumptive Board president.
>
> Mr. Kern, again, this was a learning situation for everyone involved. As I would not condone Board Members to take action against you for your handling of the situation, I will not condone any action against Mrs. Lucas. Any action towards or against her would be unwarranted and unfair. The course of action we should all take is to reflect, learn and move forward. It is my sincere

> desire that this is the course of action you will choose in this case. (Exhibit C-6)

28. By letter dated April 30, 2008, Mrs. Lucas wrote to Mr. Kern stating that she had received a call from Mr. Gordon on April 29, 2009. Mrs. Lucas states in the letter:

> At that time he stated that I should contact someone to have them pull the letter dated April 28, 2008 that I had addressed to you, the Interim Superintendent; and all related copies. He further stated that I should give him an opportunity to forward his letter to you on my behalf indicating that you should refrain from any disciplinary actions toward me in regards to the mock elections. Subsequently, the Board President emailed a copy of his letter to my address requesting that I review its' content and respond with comments. (Exhibit C-8)

29. By letter dated May 5, 2008, Mr. Kern wrote to Mrs. Lucas responding to her letter of April 28, 2008. Mr. Kern stated, in relevant part:

> You stated in your letter that Mr. Gordon was the Board President. This is incorrect. The phone calls occurred when Rita Owens was Board President and Mr. Gordon was a Board member. In either situation, neither a Board Member nor a Board President can give a directive to a staff member.

Mr. Kern therein reminded Mrs. Lucas of the line of authority in the District and added:

> The message I relayed to all Principals was that the 'mock election' would be cancelled. Again, it is irrelevant who or what group sponsored the event. This call was made by me and my Administrative Assistant to all Principals on the morning of and prior to the Elections taking place. A written memo was sent via e-mail on April 15, 2008 to all Principals. (Exhibit C-4)

30. By letter dated May 6, 2008, Mr. Kern wrote to Mrs. Lucas responding to her letter of April 30, 2008. (Exhibit C-5)

31. By letter or email dated May 21, 2008, Senator Diane Allen wrote to Mr. Gordon, as the President of the Board. Senator Allen's letter stated, in full:

> I have heard that the Willingboro School District is considering giving Willingboro Superintendent Alonzo Kittrels a lump sum bonus to buy out his contract. I understand his contract ends on June 30, 2008 so I am confused about the need to take this action. I feel very strongly that this is not a good way to spend the district funds, funds that I helped secure to get the District out of a terrible

> financial situation brought about by a number of people, possibly including Mr. Kittrels.
>
> I would like to meet with you prior to you taking any action on this issue. Please contact my office with your availability as soon as possible. (Exhibit C-9)

The letter was copied to all Board members.

32. Mr. Gordon responded to the Senator's letter indicating that he would contact her "first thing tomorrow morning (Thursday May 22) to arrange a meeting whereby, to the extent possible, I can clarify and provide information into the situation, as well as straighten out the misinformation currently circulating through the community." (Exhibit C-10)

33. Complainant Tony John wrote in an email to Mr. Gordon: "While I understand Senator Allen feels she should know what is going on with the Kittrels issue, I don't think the Willingboro Board of Education should give her anything but a 'no comment.' Everything discussed so far is supposed to be confidential and unless there is a leak on the board, it doesn't matter what is out there. There will always be rumors and misinformation…." (Exhibit C-10)

34. Mr. Gordon responded to Mr. John's email, agreeing with his assessment. He stated, "However, I will give her the respect of telling her 'no comment' and 'we cannot discuss executive session material' in person." Gordon added, "Again, I am in complete agreement that it is paramount we not breach Executive Session confidentiality to anyone, including our Honorable Senator. You have my commitment that this will not occur from the Vice President or me." (Exhibit C-10)

35. Prior to meeting with the Senator, Mr. Gordon discussed with both the Board attorney and the State Monitor what information could be shared with her.

36. Mr. Gordon met with the Senator and her aide on May 28, 2008.

37. By letter dated May 28, 2008, Senator Allen wrote to Mr. Gordon as a "follow-up" to their meeting. Senator Allen stated, in relevant part: "You will recall that at the May 28, 2008 meeting, you indicated that you felt you had to settle with Mr. Kittrels as a result of mistakes that were made by various attorneys and Board members. You explained that a lawsuit could result in substantially more than a settlement." The Senator therein requested that Mr. Gordon "forward the information pertaining to the mistakes that was previously requested to my office as soon as possible." (Exhibit C-11)

38. On July 3, 2008, the Burlington County Times published an article entitled, " W'boro board eying settlement with Kittrels." The reporter contacted Mr. Gordon for comment. He is therein quoted as saying, "What we are looking at now is, is there a way for us to settle all the (legal) cases across the board –the ones he has filed against us and the ones we filed against him ---that allows us to move on as a district and to allow the taxpayers

to stop spending good money on the bad." According to the article, which Mr. Gordon did not deny was an accurate representation of his statement, the charges pending in the Kittrels litigation could result in two years of hearing and legal bills costing the district $1 million. (Exhibit C-12)

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainants bear the burden of factually proving any violations of the Code of Ethics for School Board Members. The complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24.1(c), (d), (e), (g), (i) and (j) of the Code of Ethics for School Board Members.

Count One:

The complainants allege that on April 15, 2008, the respondent instructed the principal to ignore a decision by the Interim Superintendent not to hold PTA/WEA sponsored mock elections. The complainants contend that the respondent told the principal to contact each of the district's principals and inform them that the mock election could proceed. (Complaint at Count 1, paragraph 1) The complainants assert this was a violation of N.J.S.A. 18A:12-24.1(c), (d), (e), (i) and (j). N.J.S.A. 18A:12-24.1(c) states:

> I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The evidence on this record shows that the Board never took action to formally support or authorize the mock election. The complainants have not demonstrated that the respondent's actions, as set forth in the Findings of Fact 15-23 were "board action" so as to implicate N.J.S.A. 18A:12-24.1(c). Accordingly, the Commission finds that the complainants have not established that the respondent violated N.J.S.A. 18A:12-24.1(c).

The Commission next considers whether Mr. Gordon violated N.J.S.A. 18A:12-24.1(d), which states:

> I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

In order to establish a violation of N.J.S.A. 18A:12-24.1(d), the complainants must show that the respondent "administered" the schools, contrary to his duty as a board member. To administer the schools means that a board member has become directly involved in activities or functions that are the responsibility of school personnel *or* the day-to-day administration of the school district. N.J.A.C. 6A:28-7.1.

Here, the Commission finds that Mr. Gordon improperly administered the schools in three ways: (1) by directing Mrs. Lucas, a school administrator, to contact the other principals and tell them that the mock election was not a Board event; (2) by directing Mrs. Lucas to tell

the principals not to stand in the way of the mock election (Exhibit C-6), notwithstanding that the Interim Superintendent had already informed the principals that the mock election was cancelled; and (3) by insisting that the Interim Superintendent refrain from disciplining Mrs. Lucas (Exhibit C-6).

With respect to Mr. Gordon's directives to Mrs. Lucas, the Commission finds his writing to be most persuasive:

> I indicated to Mrs. Lucas that she should contact the Principals, as the President of the WEAA and inform them that the Mock Election was not a Board of Education Function. I further indicated that it was unprecedented for a PTA function to be canceled by the Superintendent. **Therefore, she was to instruct them not to interfere or stand in the way of said event**.
>
> As the presumptive Board President, clearly this placed Mrs. Lucas in an awkward position. However, this position was no more awkward than the position in which the other Principals were placed when they were asked to cancel a non-Board of Education function sponsored by the PTA. As I indicated to you in person, the organizers of the event were well aware of the need to ensure incentives were not provided. **When a report came to you indicating that incentives were promised, it should have been dealt with on a case by case basis and not by canceling the entire event.**
>
> Mr. Kern, the bottom line is that many of us responded in a manner which, if we could do it all over again, we would likely do differently. **If we are to mete out discipline or counsel those involved that did not respond in a matter [sic] you or I would have liked, as the leaders of this School District, then the line would be quite long. Therefore, it is unfair to single out Mrs. Lucas and counsel her. Further, it would be inadvisable to mete out discipline in any form to the President of the Union, who was advising the unit members on direction given from the presumptive Board president.**
>
> Mr. Kern, again, this was a learning situation for everyone involved. As I would not condone Board Members to take action against you for your handling of the situation, **I will not condone any action against Mrs. Lucas. Any action towards or against her would be unwarranted and unfair.** The course of action we should all take is to reflect, learn and move forward. It is my sincere desire that this is the course of action you will choose in this case. (Exhibit C-6, emphasis added)

The Commission finds that Mr. Gordon took it upon himself to intervene in a situation which was the responsibility of the Interim Superintendent. As Mr. Kern noted in his letter to Mrs. Lucas (Exhibit C-4), it is irrelevant who or what organization sponsored the mock election. The activity was to take place on school grounds and the Interim Superintendent had the right to cancel the mock election if he felt uncomfortable with the activity.[5] When the mock election was canceled by the Interim Superintendent, no matter how confusing the circumstances may have been, it was not Mr. Gordon's place to remedy the confusion or insert himself into the situation. The fact that Mr. Kern was out of the district for a portion of the day on April 15, 2008 is of no moment. Whatever uncertainty ensued as a result of the last-minute cancellation was Mr. Kern's problem to address. Moreover, the decision to discipline an employee is made by the administration, not a Board member. Accordingly, the Commission finds that the complainants have demonstrated that the respondent violated N.J.S.A. 18A:12-24.1(d).

The complainants next contend that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

> I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

"Private action" means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1.[6] For the reasons set forth above, the Commission finds that the respondent took private action: (1) by directing Mrs. Lucas, a school administrator, to contact the other principals and tell them that the mock election was not a Board event; and (2) by directing Mrs. Lucas to tell the principals not to stand in the way of the mock election (Exhibit C-6), notwithstanding that the Interim Superintendent had already informed the principals that the mock election was cancelled. In this connection, the Commission finds that the respondent's explanation of his reasons for seeking out Mrs. Lucas (*i.e.*, to let her know that he was in the building) were not persuasive, particularly in light of his repeated statement of concern that he needed to address the confusion that ensued following the cancellation. Indeed, that was his reason for talking to Mrs. Lucas on April 15, 2008.

Further, it is not necessary that the Commission find that such action, in fact, compromised the Board. Rather, it is sufficient that the action was of such a nature that it may have compromised the Board. The Commission finds that it was. Specifically, the respondent's private action on April 15, 2008, as set forth above, resulted in the principals receiving mixed messages about the mock election. Mr. Kern's testimony fairly established that that incentives that had already been offered and advertised might have tainted the school board election that was being held on the same date. To the extent any mock elections were held on that date, the

[5] To the extent the respondent asserted that the Board's policy does not allow for such discretion, it is noted that the Commission does not have jurisdiction to consider allegations of violations of local Board policy.

[6] It is noted, however, that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action *and* private action. Conversely, if a board member's action is found to be private action it cannot constitute board action.

Board may have been compromised. Accordingly, the Commission finds that the complainants have established that the respondent violated N.J.S.A. 18A:12-24.1(e).

Recently, in the matter entitled Dericks et. al. v. Schiavoni, Sparta Board of Education, C41-07, the Commission found that when the then-Board President rushed to submit a letter to the editor in response to an article that he believed was injurious to the Board without first obtaining the Board's consent, he failed to recognize that the authority to address any perceived problems as a result of the first article rested with the Board. Because the Board President's letter to the editor clearly addressed Board business and was intended to speak for the Board of Education, the Commission found that there was a reasonable likelihood that the public would perceive this letter to be an official statement of the Board's position. Thus, the Commission found, and the Commissioner of Education affirmed, that the Board President's private action could have compromised the Board if, indeed, the Board did not subscribe, as whole, to the statements he made in the letter to the editor, particular since these statements concerned the administration of the schools. Jennifer Dericks et al., v. Michael Schiavoni, Sparta Township Board of Education, Sussex County, C41-07 (February 24, 2009), Commissioner of Education Decision No. 260-09SEC, decided August 18, 2009.

The complainants next contend that the respondent violated N.J.S.A. 18A:12-24.1(i), which provides:

> I will support and protect school personnel in proper performance of their duties.

The Commission herein finds that the Interim Superintendent was acting within the proper performance of his duty as the chief school administrator when, on April 15, 2008, he cancelled the mock election. To the extent that the respondent nevertheless directed Mrs. Lucas to contact the other principals and tell them that the mock election was not a Board event, and further instruct them not to stand in the way of the mock election (Exhibit C-6), notwithstanding that the Interim Superintendent had already informed the principals that the mock election was cancelled, the respondent failed to support the Interim Superintendent in the proper performance of his duties. Accordingly, the Commission finds that the complainants have established that the respondent failed to support and protect school personnel in the proper performance of their duties, in violation of N.J.S.A. 18A:12-24.1(i).

The Commission next considers whether Mr. Gordon violated N.J.S.A. 18A:12-24.1(j), which states:

> I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

As used in this provision, "complaint" means a concern, issue or dissatisfaction that a member of the public or a member of the school personnel has brought to the attention of a member of the district board of education. N.J.A.C. 6A:28-7.1. On this record, the Commission finds that the complainants did not establish that the respondent was acting on a "complaint," but, rather, that

he was acting to straighten out what he believed to be misinformation about the cancellation of the mock election. Accordingly, the Commission finds that the complainants have not established that the respondent violated N.J.S.A. 18A:12-24.1(j).

Count Two

In the second count, the complainants allege that the respondent met with Senator Diane Allen and made statements about topics discussed by the Board in executive session concerning the litigation which the Board was involved in with its prior superintendent, Alonzo Kitrels. (Complaint at Count 2) The complainants assert that, "By Mr. Gordon disclosing his own interpretation of what was discussed at executive session meetings whether factual or not put the Board at a disadvantage concerning the Kittrels litigation." (Complaint at Count 2, paragraph 8). The complainants assert that these actions constitute a violation of N.J.S.A. 18A:12-24.1(e) and (g).

In order to establish a violation of N.J.S.A. 18A:12-24.1(e), as set forth above, the complainants must demonstrate that the respondent failed to recognize that authority rests with the board of education and made personal promises or took private action that was of such a nature that it could have compromised the board. Based on the factual findings, the respondent met with Senator Allen with both the knowledge and the consent of the Board. Thus, the Commission cannot find that, in so doing, that Mr. Gordon took private action or failed to recognize that authority rests with the board of education.

Further, the complainants assert that Mr. Gordon violated N.J.S.A. 18A:12-24.1(g) which states:

> I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.[7]

None of the complainants attended the meeting with Senator Allen. This charge rests solely on the Senator's letter dated May 28, 2008 which refers to "mistakes that were made by various attorneys and Board members." (C-11) The respondent testified that he believed that the Senator's letter referred to the Kittrels I litigation, not the Kittrels II litigation and the complainants did not offer any proofs to the contrary. Indeed, by May 2008, the facts associated with the Kittrels I matter, including the mistakes that were made in bringing the original tenure charges, were a matter of public record. (See, Factual Finding #1) Accordingly, the Commission finds that the complainants failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e) or (g) in connection with Count Two.

[7] Complainants do not appear to allege that the respondent violated the "inaccurate information" provision of the statute, so the Commission does not address this portion of N.J.S.A. 18A:12-24.1(g).

Count Three

In the third count, the complainants allege that in a July 3, 2008 newspaper article in the Burlington County Times, the respondent commented on current litigation offering "his interpretation of information that might or might not have been discussed in executive session." (Complaint at Count 3, paragraph 13) The complainants assert that this action constituted a violation of N.J.S.A. 18A:12-24.1(e) and (g).

As noted, in order to establish a violation of N.J.S.A. 18A:12-24.1(e), the complainants must demonstrate that the respondent failed to recognize that authority rests with the board of education and made personal promises or took private action that was of such a nature that it could have compromised the board. In this connection, the respondent testified that he was the Board President at the time and he was authorized to speak to the press. He also stated that he conferred with the Board attorney before speaking to the reporter. Thus, the Commission does not find that, in this instance, the complainants established that the respondent took "private action" in speaking with the reporter.

With respect to the alleged violation of N.J.S.A. 18A:12-24.1(g), as set forth above, the complainants seem to argue that Mr. Gordon: 1) released confidential information pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools; and 2) provided inaccurate information with his statement to the reporter.

On this count, the Commission finds that the complainants failed to establish what information regarding the Kittrels II litigation remained confidential as of July 3, 2008. Indeed, Senator Allen's letter of May 21, 2008 started with: "I have heard that the Willingboro School District is considering giving Willingboro Superintendent Alonzo Kittrels a lump sum bonus to buy out his contract." (Exhibit C-11) Complainant Walker stated in his testimony that "rumors were rampant about a proposed settlement." As to the alleged inaccuracy of the statement made by Gordon about the potential costs of litigation, Mr. Gordon testified that he arrived at the $1 million figure based on a question that a member of the public once asked the Board in a public session how much it budgeted for litigation on an annual basis. The complainants offer no persuasive testimony or documentary evidence to the contrary, as is their burden. Accordingly, the Commission finds that the complainants have failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) or (g) in connection with Count Three.

DECISION

The Commission finds that respondent Ken Gordon violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members and the Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24.1(c), (g) and (j).

PENALTY

The Commission recommends that the respondent be reprimanded. Initially, it is noted that the respondent no longer serves as a Board member. The Commission further notes that the

violations found herein evolved from a single date, notwithstanding that Mr. Gordon's own writing on April 29, 2008 summarizing such events, in fact, contributed to the findings of violation. On balance, the Commission is persuaded by the documentary and testimonial evidence on this record that the respondent's actions on April 15, 2008 were motivated by his misguided attempt to "straighten out misinformation" (see Gordon's testimony at page 10), rather any desire to contradict or confront the decisions of the Interim Superintendent. Nevertheless, in so doing, he undoubtedly overstepped his role as a Board member, which cannot be overlooked or excused by the Commission.[8]

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert Bender
Chairperson

Mailing Date: October 28, 2009

[8] Contrast, the Board member's actions in Jennifer Dericks et al., v. Michael Schiavoni, Sparta Township Board of Education, Sussex County, C45-07 (April 28, 2009), Commissioner of Education Decision No. 294-09SEC, decided September 15, 2009, where, on appeal, the Commissioner agreed that censure was an appropriate penalty for a former Board member found to be in violation of N.J.S.A. 18A:12-24.1(c) and (d). The Commissioner therein noted that the Board member's actions evidenced far more than a disagreement with the Superintendent and, instead, "are tantamount to a willful, full-scale usurpation of the role and responsibilities of the district administration." Dericks at slip. op. page 6.

Resolution Adopting Decision – C34-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on August 25, 2009; and

Whereas, at it meeting of September 22, 2009, the Commission found that the respondent, Ken Gordon, violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members and the Commission dismissed the allegations that the respondent violated N.J.S.A. 18A:12-24.1(c), (g) and (j); and

Whereas, at its meeting on October 27, 2009 agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

_____
Robert Bender, Chairperson

I hereby certify that this Resolution
was duly adopted by the School Ethics
Commission at it public meeting on
October 27, 2009.

_____
Joanne Boyle, Executive Director